

1982 WL 189479 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1982

***1 Re: Arrests for loitering in State office buildings**

The Honorable Harry M. Coker
Sergeant-at-Arms of the Senate
State House
Post Office Box 142
Columbia, South Carolina 29202

Dear Sir:

This informal opinion is in response to a question presented by Lt. James Melton, Senate Security. The question raised was whether or not Senate Security, or other law enforcement agencies operating in the Capitol Complex, could arrest individuals loitering in State office buildings, in violation of Section 2-2039, Ordinances of the City of Columbia.

It is the opinion of this office that such arrests could be made under Section 2-2039, provided there was a violation of the terms of that Ordinance as detailed below. Prosecution would be in the Municipal Court of Columbia, and conviction could result in confinement at the City Jail for up to thirty days, or a fine not exceeding \$200.00, or both. See, § 10-11-130, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended.

Since the violation is a misdemeanor, arrest may only occur when the violation occurs in the officer's view or upon a warrant. Prosser v. Parsons, 245 S.C. 493, 141 S.E.2d 342 (1965).

Section 2-2039 has three basic parts, each of which would have to exist to justify an arrest and conviction. First, an individual would have to loiter, remain, or wander. Second, this conduct would have to occur in a park or other public place. These first two elements are met by the individuals described by Lt. Melton. Basically, his staff is confronted with the problem of unemployed individuals, usually males, who enter State office buildings seeking protection from the weather and, on occasion, items to steal (e.g., wallets, purses).

The third requirement of the section requires that the loitering or wandering in the public building be for the purpose of any of the following:

1. Gambling,
2. Engaging in prostitution,
3. Soliciting or engaging in any business without license or authorization,
4. Unlawfully using or possessing an unlawful drug, and
5. Disturbing or interfering with the recreational or other lawful activities of others.

Briefly stated, the most common situation encountered would be an individual who loiters or wanders in a State office building who disturbs or interferes with the lawful activities of employees or other persons lawfully present. It should be noted that a

violation over and above mere loitering or wandering is required. This is consistent with the strict scrutiny given vagrancy, loitering and other similar statutes by the Courts in recent years. See e.g., 77 AM.JUR.2d Vagrancy §§ 5 et seq; [State v. Ecker](#), 311 So.2d 104 (Fla. 1975), [cert.den.](#) 423 U.S. 1019 (1975).

In addition to the City Ordinance cited above, [Section 10-11-30 of the South Carolina Code](#) prohibits trespass 'upon any property of the State, real or personal' located within the Capitol Complex. And arrests could be made by highway patrolmen and Columbia police officers, in addition to Senate Security. [Section 10-11-100, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Arrests by Senate Security would be lawful inasmuch as Security officers are vested with the same powers of arrest as regularly commissioned peace officers. [State v. Luster](#), 178 S.C. 199, 182 S.E. 427 (1935); § 23-1-60, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

*2 I trust this information will be helpful in eliminating the problems encountered. If any further information is needed, please do not hesitate to contact me.

Sincerely,

James G. Bogle
Assistant Attorney General

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